

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LYNDEN HEPBURN and
RHONDA HEPBURN,

Plaintiffs,

v.

HORIZON MIDWEST, INC.,
HORIZON FREIGHT SYSTEM, INC.,
QUINCY BERNARD HARVILL, and
OLD REPUBLIC INSURANCE CO.,

Defendants.

CIVIL ACTION NO.:

Removed from the State Court of
Fulton County, Georgia, Civil
Action File No. 21EV002534

NOTICE OF REMOVAL

COME NOW Defendants Horizon Midwest, Inc., Horizon Freight System, Inc., Quincy Bernard Harvill, and Old Republic Insurance Company (collectively, “Defendants”), by and through their undersigned counsel of record, and, pursuant to Fed. R. Civ. P. 81(c) and 28 U.S.C. §§ 1332, 1441, and 1446, hereby submit this Notice of Removal requesting removal of the above-captioned Georgia State Court action to the United States District Court for the Northern District of Georgia, Atlanta Division, respectfully showing this Honorable Court as follows:

1.

The above-styled action was filed on April 26, 2021 by Plaintiffs Lynden

Hepburn and Rhonda Hepburn in the State Court of Fulton County, Georgia, styled as Lynden Hepburn and Rhonda Hepburn v. Horizon Midwest, Inc., Horizon Freight System, Inc., Quincy Bernard Harvill, and Old Republic Insurance Company, Civil Action File No. 21EV002534. Defendants Horizon Freight Midwest, Inc., Horizon Freight System, Inc., and Old Republic Insurance Company were each served with a Summons and the Complaint on April 27, 2021 through their respective registered agents for service. Defendant Quincy Bernard Harvill is alleged to have been served via substituted service on May 2, 2021. True and accurate copies of the Summonses, Complaint, and Entries of Service are collectively attached to this Notice of Removal as Exhibit 1.

2.

The aforementioned civil action is one over which this Court has original jurisdiction and is one which may be removed to this Court by Defendants pursuant to 28 U.S.C. §§ 1441 and 1446.

3.

Upon information and belief, at all times material to this action, Plaintiffs were and are residents and citizens of the State of Georgia. (Exhibit 1, Complaint ¶ 3).

4.

At all material times, Defendant Horizon Midwest, Inc. was and is an Ohio

corporation with its principal place of business located in the State of Ohio (Exhibit 1, Complaint ¶ 10).

5.

At all material times, Defendant Horizon Freight System, Inc. was and is an Ohio corporation with its principal place of business located in the State of Ohio (Exhibit 1, Complaint ¶ 16).

6.

At all material times, Defendant Quincy Bernard Harvill was and is a resident of the State of Alabama (Exhibit 1, Complaint ¶ 4).

7.

At all material times, Defendant Old Republic Insurance Company was and is a Pennsylvania corporation with its principal place of business located in the State of Pennsylvania.

8.

Complete diversity of citizenship therefore exists between the parties in this action in accordance with 28 U.S.C. § 1332.

9.

Upon information and belief, the amount in controversy in this matter exceeds \$75,000.00. Plaintiffs specifically plead for past and future medical expenses, past

and future lost wages, pain and suffering, lost capacity to work, attorneys' fees and expenses of litigation, and punitive damages, all of which would, upon information and belief, exceed the sum of \$75,000.00. (Exhibit 1, Complaint ¶¶ 78-81). Accordingly, under 28 U.S.C. § 1446(c)(2)(A)(ii), the amount in controversy exceeds the amount specified in 28 U.S.C. § 1332(a). Therefore, pursuant to 28 U.S.C. § 1446(c)(2)(B), the Court should find, by a preponderance of the evidence, that the amount in controversy exceeds the amount specified in 28 U.S.C. § 1332(a).

10.

The State Court of Fulton County, Georgia is situated within the jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division, making this the appropriate forum to entertain this action pursuant to 28 U.S.C. § 1441(a).

11.

This Notice of Removal is timely filed under 28 U.S.C. § 1446(b). This Notice of Removal is filed within thirty (30) days of service upon Defendants Horizon Midwest, Inc., Horizon Freight System, Inc. and Old Republic Insurance Company in the underlying Georgia State Court action.

12.

As required by 28 U.S.C. § 1446(a), true and accurate copies of all process,

pleadings, and orders served upon Defendants in the underlying State Court action are attached to this Notice of Removal collectively as Exhibit 1.

13.

Defendants have given written notice of the filing of this Notice to Plaintiffs by mailing a copy of the same to Plaintiffs' counsel via United States Mail. Defendants have filed a written notice with the Clerk of Court of Fulton County, Georgia, a true and accurate copy of which is attached to this Notice of Removal as Exhibit 2.

14.

The undersigned has read this Notice of Removal and, to the best of his knowledge, information, and belief, it is well-grounded in fact and warranted by existing law. (See Affidavit of Kyle A. Ference, attached to this Notice of Removal as Exhibit 3).

WHEREFORE, Defendants pray that this case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

Respectfully submitted this 26th day of May, 2021.

(SIGNATURE TO FOLLOW ON NEXT PAGE)

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Kyle A. Ference

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CERTIFICATE OF SERVICE

We hereby certify that we have this day served a copy of the foregoing **NOTICE OF REMOVAL**, and all exhibits referenced therein, by electronically filing the same with the Clerk of Court using the CM/ECF system, which will automatically send electronic notifications to counsel for Plaintiff, and by depositing a copy of the same in the United States Mail, proper postage prepaid, to counsel for Plaintiff at:

J. Martin Futrell
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Counsel for Plaintiff

Submitted this 26th day of May, 2021.

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ Kyle A. Ference
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